

1 It's about twelve o'clock or close to it.

2 MR. RIVERA:

3 This is off the record?

4 MR. MC CULLOCH:

5 Yes, we don't have to be on the record.

6 (OFF THE RECORD)

7 BY MR. MC CULLOCH:

8 Q Did Vicente Guzman ever have discussions with
9 --withdrawn.

10 Did there come a time during the summer of 1997 that
11 Vicente Guzman told you that the price of the
12 T-2000 bed of Tuff Care was three hundred and sixty-nine
13 dollars?

14 A I don't remember.

15 Q Was there any document that you would have had
16 access to when you were at Graham-Field Express that would
17 have indicated to you what the price was to you for the
18 Tuff Care products that you could buy?

19 A No.

20 Q Now, when you were over at Graham-Field Express,
21 did Vicente Guzman continue to set the prices that you
22 would charge customers for products?

23 A Yes.

24 Q And was the same procedure used that he used with
25 VC Medical?

1 A I don't know. He gave me the sales prices.

2 Q Did he ask you for cost for different items and
3 cost for duty and cost for shipping for the products?

4 A Yes, he asked me to show him the invoice and I'd
5 show him Graham-Field's invoices plus the bill of lading.

6 Q Roughly what would--withdrawn.

7 When you ordered goods from Tuff Care you would order
8 them by trailer load; correct?

9 A Yes.

10 Q So that would have very many different products
11 in it; correct?

12 A Yes.

13 Q And in establishing how much it cost you for
14 shipping of a particular product, did you come up with a
15 rule of thumb that it cost you approximately thirty dollars
16 per bed, for each bed that was in a shipment?

17 A In Tuff Care's case as far as beds we never had
18 to calculate that. We never received beds from Tuff Care.

19 Q Did you receive beds from any other manufacturer?

20 A Graham-Field.

21 Q And did you allocate a price to the shipping cost
22 for beds that you were receiving from Graham-Field?

23 A Let's say if they came in a van, a hundred beds
24 cost three thousand dollars, thirty dollars per bed.

25 Q So was that--is that what you attributed the

1 Care part. She stated she went to work for Medex, not Tuff
2 Care.

3 MR. MC CULLOCH:

4 I understand that.

5 MR. RIVERA:

6 They're two different businesses.

7 MR. MC CULLOCH:

8 But let me ask it in a different way then.

9 MR. RIVERA:

10 Okay.

11 BY MR. MC CULLOCH:

12 Q When was the first time you had any discussions
13 with Calvin Chang about working for any company that he was
14 involved in?

15 A He was quite specific, he said it would be with
16 Medex and that was in January.

17 Q Prior to then you had no discussions with him
18 about working for any company that he was involved?

19 A For many years I joked and asked him when he was
20 going to give me work in the states because I wanted to
21 move, but it was only in a joking way.

22 Q And what did he say when you said that?

23 A That whenever I was ready to just let him know.
24 It was all in a joking gesture.

25 Q In January of '98 did you call Calvin Chang or

1 did Calvin Chang call you?

2 A Calvin Chang called me because I had retired, I
3 did not want to work anymore.

4 Q He called you at your home?

5 A Yes.

6 Q Did Calvin Chang say how he got your number at
7 home?

8 A He had my phone number since I'd been working at
9 VC Medical. Since he's in California most of the time,
10 there is a four hour time difference, so by the time he's
11 at his office I'm already at home.

12 THE INTERPRETER:

13 Counselor, would you allow me one minute?

14 MR. MC CULLOCH:

15 Sure.

16 (OFF THE RECORD)

17 BY MR. MC CULLOCH:

18 Q I'm going to take you back to that call that you
19 received from Calvin Chang in January of 1998. Would you
20 tell me what he said, what you said, what the conversation
21 was?

22 A He told me he was going to open a business in
23 Puerto Rico, if I could give him a hand.

24 Q And what did you say?

25 A First I told him I didn't want to work anymore.

1 requested it from me first.

2 Q When did Jose Morales--Edwin Morales and Jose
3 Santos visit your location and ask you for work?

4 A When exactly I don't remember, but it was by late
5 February.

6 Q Did anyone--or did you call over to anybody over
7 at Graham-Field Express and ask them to work for Medex?

8 A No.

9 Q Are there any other employees who were working
10 for Graham-Field Express who are now working for Medex?

11 A Yes.

12 Q And who is that?

13 A Juan Gomez.

14 Q Did you call to Juan Gomez while he was still
15 employed at Graham-Field and ask him to come to work for
16 Medex?

17 A No.

18 Q How did it come that Juan Gomez came to work for
19 Medex?

20 A In the same manner, came by to greet me.

21 Q He asked for a job?

22 A Yes.

23 Q Now, when you had that first conversation with
24 Calvin Chang and he talked to you about recruiting, who did
25 he talk to you about recruiting?

1 A No one.

2 Q Did he tell you what type of employee would have
3 to be recruited by you?

4 A No. He left that to my discretion.

5 Q In your discretion, at what point did you make--
6 did you make a--withdrawn.

7 In your discretion did there come a point in time when
8 you determined that it would be advisable for Medex to
9 recruit two sales representatives?

10 A Yes.

11 Q And when did you make that determination?

12 A I don't remember when, but it must have been by
13 the end of that month, in February.

14 Q And what was your conclusion regarding
15 recruitment of who should be recruited?

16 A Well, two had gone by already asking for work.
17 Let's give them a break, see what happens.

18 Q Why don't you take me through the sequence in
19 chronological order of how this developed that you had two
20 sales reps from Graham-Field working for Medex?

21 A I don't remember exact dates. There was a point
22 in time by the end of February that they went by there on
23 a social call to greet me, see how I was. And they told me
24 that whether there was work for them and if I would
25 consider them as employees for Medex. Later on, about a

1 saying how much this is sold for.

2 Q So the price--as of that time, the price of three
3 hundred and forty-seven dollars was in your computer as the
4 price that you'd have to pay for the semi-motorized home
5 health care bed?

6 A I don't know. I don't know if that's the one or
7 if there was any other one.

8 Q Well, who put those prices in your computer?

9 A I explained earlier that when I went in there the
10 computer already had those prices lists in there.

11 Q Were those prices that were in the computer ever
12 changed?

13 A I don't change them. I have no access to change
14 them.

15 Q Did others change it?

16 A I don't know. I don't know the computer cost, I
17 know sales price.

18 Q Okay. So when you receive goods you didn't worry
19 about what was in the columns of price, unit price or end
20 price because your responsibility was to acknowledge
21 receipt of the number of goods, but that was not your
22 responsibility to look to check against the price? Is that
23 what you're saying?

24 A That's correct. Because I'm in receiving. In
25 terms of accounts payable people are in the states. I

1 drafted no checks of any kind. They have an office there.

2 Q Okay. So the accounts payable office of Medex
3 was really Calvin Chang, wasn't it?

4 A I don't know. I've never been to California. I
5 know there is a Medex office there. I'm sure that Calvin
6 Chang doesn't sit down to draft checks that he has to make.
7 The payroll, everything is paid from there. There is a
8 young woman that contacts me.

9 Q Who is that?

10 A Who is who? What's her name? Jesse. I know her
11 by Jesse.

12 Q And where does Jesse work?

13 A In a Medex office of Tuff Care, Kathy.

14 Q Kathy Lee?

15 A Yes.

16 Q Okay. And she worked--and Kathy Lee works in
17 Anaheim for Tuff Care; right?

18 A I don't know, I know she works in Tuff Care.

19 Q When you finish going through an invoice then,
20 what did you do, you faxed it up to Kathy Lee? Withdrawn.

21 What did you do after you marked it up that everything
22 was received, what did you do with it?

23 A Fax it so they do whatever they need to do with
24 it.

25 Q And what number did you fax it to?

1 After you called for an order, what's the next piece of
2 paper that would be generated?

3 MR. RIVERA:

4 Objection to the form.

5 BY MR. MC CULLOCH:

6 Q What was the next step after you placed an order
7 by telephone?

8 A The merchandise arrives with an invoice.
9 Or they first fax in the invoice.

10 Q Would they fax in the invoice before the order
11 came in, before the ship came in?

12 A Yes, because I have to pay taxes. I need the
13 commercial invoice.

14 Q Okay. Now, when you called in the order you
15 would call in the number of units that you wanted;
16 correct?

17 A On occasions I would make what we call a blanket
18 order. For example, in January of this year I said I need
19 X number of beds for this full year. So every month
20 they'll send two or three containers, it all depends, it
21 would vary.

22 Q I thought you said you were ordering--that you
23 were the one determining the number of units you would get.
24 But now you're saying they just ship products and you sell
25 them?

1 A The chairs I'll stipulate the amount and
2 miscellaneous like that. For example, I'll put one hundred
3 chairs type A, fifty type B, fifty type C and then I say,
4 fill up the container with whatever, understand.

5 In the case of the beds since there's a blanket or
6 standing order and you have a fixed amount of beds that are
7 able to fit in the container, then they'll forward it.

8 Q What was your standing order then? To fill up
9 the--what was your standing order?

10 A In terms of beds?

11 Q Of any--what was your standing order in terms of
12 beds?

13 A In beds? Three thousand beds per year.

14 Q Okay. And what does that mean? What does a
15 standing--you want three thousand beds per year whenever
16 they want to send them?

17 A No. They are supposed to send between three and
18 four containers per month for beds. Just beds alone.

19 Q When you say beds, what kind of beds do you mean?

20 A T-2000. That's the one we're talking about.

21 Q So did you have a standing order for other kind
22 of beds?

23 A No.

24 Q Why did you have a standing order for T-2000 beds
25 and no other products?

1 A Because that's the one that's sold. Others are
2 slower selling. This is the semi-electric, the
3 T-2000. The 3000 is fully electric, doesn't hardly sell.
4 And the 1000 is manual, that hardly sells either.

5 Q Is the T-2500 bed a better bed than the T-2000
6 bed?

7 MR. RIVERA:

8 Excuse me, but what- -

9 BY MR. MC CULLOCH:

10 Q T-2500.

11 A No. The T-2500 is a fixed bed, it doesn't move
12 up and down.

13 Q Is the T-2500 a more expensive bed in the--you
14 charge more for a T-2500 bed than you do for a T-2000 bed?

15 A I don't think so. Since there's a larger volume
16 for it, it can at times be sold at a cheaper price.

17 Q I'm talking about in the price list, in the
18 dealer price list, is the price for the T-2000 bed less
19 than the price of the T-2500 bed?

20 A No. It's more expensive.

21 Q Now, let's take this thing of a standing order.
22 The only product you had around was the T-2000 beds from
23 what you're telling me; is that correct?

24 A Correct?

25 Q And if you didn't place any order--if you had a

1 standing order, when you called in to Florida or Anaheim,
2 would you place an order for T-2000 beds if you already had
3 a standing order already made?

4 A Yes. Yes, because if I'm running out of beds and
5 short on them, I'll put a rush order on then. And that
6 standing order doesn't mean that they have to ship me in
7 all those beds either. On a month to month basis I phone
8 in and I tell them if they should send it in or not send it
9 in and how many should be sent in.

10 Q Let's stay with the standing order. If you made
11 a standing order for three thousand beds and then you
12 didn't do anything else, you just sat back and didn't call
13 up for special--for other invoices or other shipments, what
14 did you expect to happen with your standing order? What
15 would you be receiving, when would you be receiving it and
16 how much would you be charged for it?

17 A If I have a standing order for X amount of beds
18 for one year and it specifies that they'll be shipped on a
19 monthly basis, if in January I sell three container loads,
20 I'll ask for four containers for February just to be
21 certain.

22 Q You didn't answer the question. Without you
23 asking anything else, what happens--let me withdraw the
24 question.

25

1 Graham-Field wanted to buy it?

2 A He never told me anything.

3 Q Now, the price of the T-2000 bed to your
4 customers and clients, were you always the one setting the
5 price for the sale of that goods in Puerto Rico?

6 A It's what I said before, the salesman would come
7 over and says this is the competition in the field and we'd
8 match them.

9 Q Okay. What I'm saying then is, Calvin Chang
10 didn't tell you to have Medex sell this product at four
11 hundred and nineteen dollars or four hundred and twenty-
12 two? That was a decision that you made after you became
13 general manager for Medex in Puerto Rico?

14 A That's correct.

15 Q What was the least of a profit margin that you
16 would accept on the sale? You've indicated that your
17 profit margin you wanted was twenty percent, but that
18 sometimes to meet the competition you would go lower. What
19 would be the lowest that you would go in pricing the T-2000
20 bed against competition as far as your percentage profit
21 margin?

22 A Quite frankly I wouldn't know because the beds
23 when they're sold they're sold with the side railings, sold
24 with the mattress. So therefore, whatever you lose on the
25 bed you might be able to make it up with the other items.

1 Q Did the sales people call in from the field and
2 present to you different options? Someone won't buy the
3 bed at this but they will buy the bed at this if I--did
4 they present scenarios to you or options to you that you
5 made the decision over the phone as to whether to sell a
6 package at a certain price?

7 A That type scenario does show up but generally I
8 don't make the decision on the spot. Generally you see
9 what type of client it is, if they're going to pay right
10 away, if they're going to pay on a thirty day basis.

11 Q Well, that's what I'm asking. I'm asking those
12 questions. Did you--would you make a decision based upon
13 all of those factors regarding pricing of the item?

14 A Yes, I would take that in consideration but I
15 didn't believe you had asked me that.

16 Q Okay. Did the sales reps, after they came to
17 work for Medex receive commissions in addition to salary?

18 A They received very small commissions based upon
19 complying with a certain quota. It wasn't a commission but
20 rather a five hundred dollar bonus quarterly.

21 Q For meeting their sales quota?

22 A Yes.

23 Q And that was gross sales, was it?

24 A Umhum.

25 Q Did you make calls to clients or customers,

1 Q And what is it?

2 A Dealer's Price List.

3 Q What does that mean, Dealer's Price List?

4 A That's the suggested retail price.

5 Q That's the suggested price that Medex sell the
6 products to its customers?

7 A This isn't Medex, this is Tuff Care.

8 Q So this is the price that Tuff Care sells--
9 suggested price that Tuff Care sells to Medex?

10 A I don't believe so since Medex is not a dealer,
11 Medex is a distributor.

12 Q Well, who would get those prices then?

13 A You'd have to ask Tuff Care. I have this for my
14 own use but this is never given to a client unless Tuff
15 Care mails that from the U.S. I don't know.

16 Q What do you use that for then? If you use that
17 document, what do you use it for?

18 A I have no use for it. I just keep it on file.
19 This is Tuff Care's.

20 Q So I thought you said you used it for something.
21 Now you're saying you don't use it at all?

22 A No, I don't believe I said that I did use it.
23 This is Tuff Care's price list for their dealers in the
24 U.S.

25 Q Do you use that to identify the products that